
ENGROSSED SUBSTITUTE SENATE BILL 6392

State of Washington

62nd Legislature

2012 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Kohl-Welles, Conway, and Shin)

READ FIRST TIME 02/01/12.

1 AN ACT Relating to a farm internship program; reenacting and
2 amending RCW 49.46.010; adding a new section to chapter 49.12 RCW;
3 adding a new section to chapter 51.16 RCW; adding a new section to
4 chapter 50.04 RCW; creating a new section; and providing an expiration
5 date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
8 to read as follows:

9 (1) The director shall establish a farm internship pilot project
10 until December 1, 2017, for the employment of farm interns on small
11 farms under special certificates at wages, if any, as authorized by the
12 department and subject to such limitations as to time, number,
13 proportion, and length of service as provided in this section and as
14 prescribed by the department. The pilot project consists of the
15 following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce,
16 Jefferson, Spokane, Yakima, Chelan, Grant, Kittitas, Lincoln, and
17 Thurston.

18 (2) A small farm may employ no more than three interns at one time
19 under this section.

1 (3) A small farm must apply for a special certificate on a form
2 made available by the director. The application must set forth: The
3 name of the farm and a description of the farm seeking the certificate;
4 the type of work to be performed by a farm intern; a description of the
5 internship program; the period of time for which the certificate is
6 sought and the duration of an internship; the number of farm interns
7 for which a special certificate is sought; the wages, if any, that will
8 be paid to the farm intern; any room and board, stipends, and other
9 remuneration the farm will provide to a farm intern; and the total
10 number of workers employed by the farm.

11 (4) Upon receipt of an application, the department shall review the
12 application and issue a special certificate to the requesting farm
13 within fifteen days if the department finds that:

14 (a) The farm qualifies as a small farm;

15 (b) There have been no serious violations of chapter 49.46 RCW or
16 Title 51 RCW that provide reasonable grounds to believe that the terms
17 of an internship agreement may not be complied with;

18 (c) The issuance of a certificate will not create unfair
19 competitive labor cost advantages nor have the effect of impairing or
20 depressing wage or working standards established for experienced
21 workers for work of a like or comparable character in the industry or
22 occupation at which the intern is to be employed;

23 (d) A farm intern will not displace an experienced worker; and

24 (e) The farm demonstrates that the interns will perform work for
25 the farm under an internship program that: (i) Provides a curriculum
26 of learning modules and supervised participation in farm work
27 activities designed to teach farm interns about farming practices and
28 farm enterprises; (ii) is based on the bona fide curriculum of an
29 educational or vocational institution; and (iii) is reasonably designed
30 to provide the intern with vocational knowledge and skills about
31 farming practices and enterprises. In assessing an internship program,
32 the department may consult with relevant college and university
33 departments and extension programs and state and local government
34 agencies involved in the regulation or development of agriculture.

35 (5) A special certificate issued under this section must specify
36 the terms and conditions under which it is issued, including: The name
37 of the farm; the duration of the special certificate allowing the
38 employment of farm interns and the duration of an internship; the total

1 number of interns authorized under the special certificate; the
2 authorized wage rate, if any; and any room and board, stipends, and
3 other remuneration the farm will provide to the farm intern. A farm
4 worker may be paid at wages specified in the certificate only during
5 the effective period of the certificate and for the duration of the
6 internship.

7 (6) If the department denies an application for a special
8 certificate, notice of denial must be mailed to the farm. The farm
9 listed on the application may, within fifteen days after notice of such
10 action has been mailed, file with the director a petition for review of
11 the denial, setting forth grounds for seeking such a review. If
12 reasonable grounds exist, the director or the director's authorized
13 representative may grant such a review and, to the extent deemed
14 appropriate, afford all interested persons an opportunity to be heard
15 on such review.

16 (7) Before employing a farm intern, a farm must submit a statement
17 on a form made available by the director stating that the farm
18 understands: The requirements of the industrial welfare act, chapter
19 49.12 RCW, that apply to farm interns; that the farm must pay workers'
20 compensation premiums in the assigned intern risk class and must pay
21 workers' compensation premiums for nonintern work hours in the
22 applicable risk class; and that if the farm does not comply with
23 subsection (8) of this section, the director may revoke the special
24 certificate.

25 (8) The director may revoke a special certificate issued under this
26 section if a farm fails to: Comply with the requirements of the
27 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
28 pay workers' compensation premiums in the assigned intern risk class;
29 or pay workers' compensation premiums in the applicable risk class for
30 nonintern work hours.

31 (9) Before the start of a farm internship, the farm and the intern
32 must sign a written agreement and send a copy of the agreement to the
33 department. The written agreement must, at a minimum:

34 (a) Describe the internship program offered by the farm, including
35 the skills and objectives the program is designed to teach and the
36 manner in which those skills and objectives will be taught;

37 (b) Explicitly state that the intern is not entitled to

1 unemployment benefits or minimum wages for work and activities
2 conducted pursuant to the internship program for the duration of the
3 internship;

4 (c) Describe the responsibilities, expectations, and obligations of
5 the intern and the farm, including the anticipated number of hours of
6 farm activities to be performed by and the anticipated number of hours
7 of curriculum instruction provided to the intern per week;

8 (d) Describe the activities of the farm and the type of work to be
9 performed by the farm intern; and

10 (e) Describes any wages, room and board, stipends, and other
11 remuneration the farm will provide to the farm intern.

12 (10) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "Farm intern" means an individual who provides services to a
15 small farm under a written agreement and primarily as a means of
16 learning about farming practices and farm enterprises.

17 (b) "Farm internship program" means an internship program described
18 under subsection (4)(e) of this section.

19 (c) "Small farm" means a farm:

20 (i) Organized as a sole proprietorship, partnership, or
21 corporation;

22 (ii) That reports on the applicant's schedule F of form 1040 or
23 other applicable form filed with the United States internal revenue
24 service annual sales less than two hundred fifty thousand dollars; and

25 (iii) Where all the owners or partners of the farm provide regular
26 labor to and participate in the management of the farm, and own or
27 lease the productive assets of the farm.

28 (11) The department shall monitor and evaluate the farm internships
29 authorized by this section and report to the appropriate committees of
30 the legislature by December 31, 2017. The report must include, but not
31 be limited to: The number of small farms that applied for and received
32 special certificates; the number of interns employed as farm interns;
33 the nature of the educational activities provided to the farm interns;
34 the wages and other remuneration paid to farm interns; the number of
35 and type of workers' compensation claims for farm interns; the
36 employment of farm interns following farm internships; and other
37 matters relevant to assessing farm internships authorized in this
38 section.

1 **Sec. 2.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
2 reenacted and amended to read as follows:

3 As used in this chapter:

4 (1) "Director" means the director of labor and industries;

5 (2) "Employ" includes to permit to work;

6 (3) "Employee" includes any individual employed by an employer but
7 shall not include:

8 (a) Any individual (i) employed as a hand harvest laborer and paid
9 on a piece rate basis in an operation which has been, and is generally
10 and customarily recognized as having been, paid on a piece rate basis
11 in the region of employment; (ii) who commutes daily from his or her
12 permanent residence to the farm on which he or she is employed; and
13 (iii) who has been employed in agriculture less than thirteen weeks
14 during the preceding calendar year;

15 (b) Any individual employed in casual labor in or about a private
16 home, unless performed in the course of the employer's trade, business,
17 or profession;

18 (c) Any individual employed in a bona fide executive,
19 administrative, or professional capacity or in the capacity of outside
20 salesperson as those terms are defined and delimited by rules of the
21 director. However, those terms shall be defined and delimited by the
22 human resources director pursuant to chapter 41.06 RCW for employees
23 employed under the director of personnel's jurisdiction;

24 (d) Any individual engaged in the activities of an educational,
25 charitable, religious, state or local governmental body or agency, or
26 nonprofit organization where the employer-employee relationship does
27 not in fact exist or where the services are rendered to such
28 organizations gratuitously. If the individual receives reimbursement
29 in lieu of compensation for normally incurred out-of-pocket expenses or
30 receives a nominal amount of compensation per unit of voluntary service
31 rendered, an employer-employee relationship is deemed not to exist for
32 the purpose of this section or for purposes of membership or
33 qualification in any state, local government, or publicly supported
34 retirement system other than that provided under chapter 41.24 RCW;

35 (e) Any individual employed full time by any state or local
36 governmental body or agency who provides voluntary services but only
37 with regard to the provision of the voluntary services. The voluntary
38 services and any compensation therefor shall not affect or add to

1 qualification, entitlement, or benefit rights under any state, local
2 government, or publicly supported retirement system other than that
3 provided under chapter 41.24 RCW;

4 (f) Any newspaper vendor or carrier;

5 (g) Any carrier subject to regulation by Part 1 of the Interstate
6 Commerce Act;

7 (h) Any individual engaged in forest protection and fire prevention
8 activities;

9 (i) Any individual employed by any charitable institution charged
10 with child care responsibilities engaged primarily in the development
11 of character or citizenship or promoting health or physical fitness or
12 providing or sponsoring recreational opportunities or facilities for
13 young people or members of the armed forces of the United States;

14 (j) Any individual whose duties require that he or she reside or
15 sleep at the place of his or her employment or who otherwise spends a
16 substantial portion of his or her work time subject to call, and not
17 engaged in the performance of active duties;

18 (k) Any resident, inmate, or patient of a state, county, or
19 municipal correctional, detention, treatment or rehabilitative
20 institution;

21 (l) Any individual who holds a public elective or appointive office
22 of the state, any county, city, town, municipal corporation or quasi
23 municipal corporation, political subdivision, or any instrumentality
24 thereof, or any employee of the state legislature;

25 (m) All vessel operating crews of the Washington state ferries
26 operated by the department of transportation;

27 (n) Any individual employed as a seaman on a vessel other than an
28 American vessel;

29 (o) Any farm intern providing his or her services to a small farm
30 which has a special certificate issued under section 1 of this act;

31 (4) "Employer" includes any individual, partnership, association,
32 corporation, business trust, or any person or group of persons acting
33 directly or indirectly in the interest of an employer in relation to an
34 employee;

35 (5) "Occupation" means any occupation, service, trade, business,
36 industry, or branch or group of industries or employment or class of
37 employment in which employees are gainfully employed;

1 (6) "Retail or service establishment" means an establishment
2 seventy-five percent of whose annual dollar volume of sales of goods or
3 services, or both, is not for resale and is recognized as retail sales
4 or services in the particular industry;

5 (7) "Wage" means compensation due to an employee by reason of
6 employment, payable in legal tender of the United States or checks on
7 banks convertible into cash on demand at full face value, subject to
8 such deductions, charges, or allowances as may be permitted by rules of
9 the director.

10 NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW
11 to read as follows:

12 The department shall adopt rules to provide special workers'
13 compensation risk class or classes for farm interns providing
14 agricultural labor pursuant to a farm internship program under section
15 1 of this act. The rules must include any requirements for obtaining
16 a special risk class that must be met by small farms.

17 NEW SECTION. Sec. 4. A new section is added to chapter 50.04 RCW
18 to read as follows:

19 (1) Except for services subject to RCW 50.44.010, 50.44.020,
20 50.44.030, or 50.50.010, the term "employment" does not include service
21 performed in agricultural labor by a farm intern providing his or her
22 services under a farm internship program as established in section 1 of
23 this act.

24 (2) For purposes of this section, "agricultural labor" means:

25 (a) Services performed on a farm, in the employ of any person, in
26 connection with the cultivation of the soil, or in connection with
27 raising or harvesting any agricultural or horticultural commodity,
28 including raising, shearing, feeding, caring for, training, and
29 management of livestock, bees, poultry, and furbearing animals and
30 wildlife, or in the employ of the owner or tenant or other operator of
31 a farm in connection with the operation, management, conservation,
32 improvement, or maintenance of such farm and its tools and equipment;

33 (b) Services performed in packing, packaging, grading, storing, or
34 delivering to storage, or to market or to a carrier for transportation
35 to market, any agricultural or horticultural commodity; but only if
36 such service is performed as an incident to ordinary farming

1 operations. The exclusions from the term "employment" provided in this
2 subsection (2)(b) are not applicable with respect to commercial packing
3 houses, commercial storage establishments, commercial canning,
4 commercial freezing, or any other commercial processing or with respect
5 to services performed in connection with the cultivation, raising,
6 harvesting and processing of oysters or raising and harvesting of
7 mushrooms; or

8 (c) Direct local sales of any agricultural or horticultural
9 commodity after its delivery to a terminal market for distribution or
10 consumption.

11 NEW SECTION. **Sec. 5.** Appropriations made for the purposes of this
12 act must be from the state general fund.

13 NEW SECTION. **Sec. 6.** This act expires December 31, 2017.

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